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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,662

09/05/2003

Vikkie A. Mustad

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02/26/2008

ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES  
DEPARTMENT 108140-DS/1  
625 CLEVELAND AVENUE  
COLUMBUS, OH 43215-1724

EXAMINER

CARR, DEBORAH D

ART UNIT

PAPER NUMBER

1621

MAIL DATE

DELIVERY MODE

02/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/656,662	<b>Applicant(s)</b> MUSTAD ET AL.	
	<b>Examiner</b> Deborah D. Carr	<b>Art Unit</b> 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 9-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see pages 12-13, filed 14 September 2007, with respect to claims 1-8 have been fully considered and were persuasive therefore the 112 rejections of claims 1-8 has been withdrawn.
2. Applicant's arguments filed 14 September 2007 regarding claims 1-7 rejected under 35 USC§102(b) have been fully considered but they are not persuasive.

### *Status of Claims*

3. Claims 9-45 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claims. Applicant timely traversed the restriction (election) requirement in Paper Dated. 15 April 2005.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-7 rejected under 35 U.S.C. 102(a) as being clearly anticipated by US Pub. 2004/0062847.

US Pub.'847 teaches an oil/fat composition containing alpha-linolenic acid, omega-6 fatty acids and omega-9 fatty acids that read on all of the ratios and applicable acids as defined in the dependent claims. See Table 1, col. 3 wherein the amounts of fatty acids are as follows: C18:3 n-3 (40.5); C18:1 n-9 (34.5); C18:2 n-6 (14:0), saturated fatty acids (C16:0 & C18:0 - total 10.7).

#### Applicant's Response

Applicants have amended the claim to include the limitation "wherein the combination of naturally occurring oils in the lipid system provide the fatty acid ratios." This limitation was added to distinguish the instant ratios are based on the oils in the lipid system. The previous argument regarding the fatty acid constituents and their presence to formulate the composition based on the required ratios has been reiterated.

#### Examiner's Response

Regarding the addition of the limitation, "the combination of naturally occurring oils in the lipid system provides the fatty acid ratios," it is evident the concentrations are provided by naturally occurring fats/oils. While the oil/fat compositions are composed of naturally occurring oils/fat that have been hydrolyzed producing free fatty acids which are then esterified with glycerol, the actual combination of fatty acids (i.e.,  $\alpha$ -linoleic acid,

omega 6/9 fatty acids) is based on what was originally present in the oil/fat. US'847 s uses some of the same oils/fats to obtain the instant fatty acids as show on page 7 of the specification. On page 8 of the specification applicants state the source of the fatty acids can be the result of chemical or biochemical reactions such as transgenic, synthetic. Hence, this limitation does not render the claims novel and can be viewed to teach away from the spirit and essence of the instant invention.

Again, it should be noted that the instant lipid system is comprised of oils containing a certain amount of fatty acid moieties attached to the glycerol backbone.

**The following rejections are deemed proper.**

***Claim Rejections - 35 USC § 112.***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended claim 1 such that the fatty acid ratios are fulfilled by a combination of naturally occurring oils in the lipid system. As written, claim 1 does not

contain naturally occurring oils but specific fatty acid. Since there are no oils listed in the lipid system it is unclear how the fatty acids list can result from a combination of naturally occurring oils.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deborah D Carr/  
Primary Examiner, Art Unit 1621  
ddc